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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* COLIN I'ANSON

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Appeal 2008-4966  
Application 09/770,074  
Technology Center 2600

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Decided:<sup>1</sup> March 24, 2009

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Before MAHSHID D. SAADAT, MARC S. HOFF, and KARL D.  
EASTHOM, *Administrative Patent Judges*.

SAADAT, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellant appeals under 35 U.S.C. § 134(a) from the rejection of claims 1-15 and 17-24. Claim 16 has been canceled. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

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<sup>1</sup> The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, begins to run from the decided date shown on this page of the decision. The time period does not run from the Mail Date (paper delivery) or Notification Date (electronic delivery).

## STATEMENT OF THE CASE

Appellant's invention relates to data transfer over a cellular infrastructure and a method for determining how and when data transfer can take place within the cost criteria specified for the transfer (Spec. 1:5-7, 4:2-24). Claim 1, which is representative of the claims on appeal, reads as follows:

1. A method of cost-sensitive control of data transfer between a mobile entity and a data network through a cellular radio infrastructure, the method comprising carrying out the following steps at a service system

(a) receiving a transfer descriptor indicative of, at least generally, the end points of a required data transfer, and of transfer criteria to be met by this transfer, these criteria comprising at least a cost criterion, and a delay criterion being indicative of an acceptably delay before transfer initiation;

(b) determining by reference to both current and future data-transfer tariffs whether and, if so, how, the data transfer can be effected within the transfer criteria;

(c) where step (b) produces a positive determination, instructing initiation of the data transfer in accordance therewith.

The Examiner relies on the following prior art references:

Zonoun	US 6,487,172 B1	Nov. 26, 2002
Stinson	US 6,493,556 B1	Dec. 10, 2002
Shaffer	EP 0 848 560 A2	Jun. 17, 1998
Hilsenrath	GB 2 328 117 A	Feb. 10, 1999

Claims 1, 2, 4, 8, 10, 13-15, 18, 19, and 22 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Stinson, Zonoun, and Hilsenrath.

Claims 3, 5-7, 9, 11, 12, 20, 21, 23, and 24 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Stinson, Zonoun, and Hilsenrath in view of Shaffer.

We make reference to the Briefs (Appeal Brief filed Mar. 30, 2006 and Reply Brief filed Jan. 7, 2008) and the Answer (mailed Dec. 13, 2007) for Appellant's and the Examiner's arguments. Only those arguments actually made by Appellant have been considered in this decision. Arguments which Appellant did not make in the Briefs have not been considered and are deemed waived. *See* 37 C.F.R. § 41.37(c)(1)(vii).

### ISSUE

The issue on appeal is whether under 35 U.S.C. § 103, the combination of Stinson, Zonoun, and Hilsenrath, as proposed by the Examiner, teaches or suggests the limitation of receiving a transfer descriptor "indicative of an acceptable delay before transfer initiation" and determining the effect on data transfer "by reference to both current and future data-transfer tariffs," as recited in claim 1.

### FINDINGS OF FACT

#### *Stinson*

1. Stinson relates to a master routing hub (50, FIG. 1) which selects an appropriate communications path in accordance with the quality of service indicator in order to provide the best available quality of service at the lowest cost to the subscribers. (Abstract).

2. The quality of service indicator can specify a maximum latency in data transmitted to and received from subscriber unit 10 in Figure 1, or can specify a minimum limit of channel bandwidth in the communications path, or a maximum number of errors (such as a bit error rate) in a data

packet transmitted to or received from subscriber unit 10. (Col. 2, l. 66 – col. 3, l. 6).

3. The cost information is expressed in terms of a cost for a particular level of quality of service with the expectation that a lower quality of service communications path will be more economical, while a higher quality of service communication path, such as a path having properties of lower latency and/or higher bandwidth, will be offered at a premium price. (Col. 3, ll. 7-18).

4. Stinson also defines the quality of service versus cost schedule as a function of time of day. (Col. 3, ll. 19-21).

5. Thus, master routing hub 50 in Stinson can select the most economical and highest quality communications path between subscriber units available at any given time and optimize the communications path between the subscriber units, reducing the associated cost to the lowest possible level. (Col. 3, ll. 37-42).

#### *Zonoun*

6. Zonoun relates to a method and apparatus for selecting a route to a destination for a data packet based on routing metrics received in response to a bid broadcast on a network. (Abstract).

7. As depicted in Figure 2, Zonoun describes the information about the data packet(s) being sent and criteria for the type of routing metric values being sought. For example, the actual cost of sending the packet(s) and the amount of delay in transporting the packet(s) to the destination are two types of metric values being typically sought. (Col. 3, ll. 13-29).

8. The requester can select the least expensive route for sending text data packets, but where real time conversation is more critical, the path

with the least delay may be more attractive. Likewise, a compromise equation can be set for obtaining the most optimum cost/delay factors. (Col. 5, ll. 11-23).

### *Hilsenrath*

9. The least cost routing device of Hilsenrath determines the current rates charged by the network service provider by collecting their costing information related to different rates charged for different times of the day or peak/off-peak times for each day of the week. (P. 10, ll. 5-14).

10. Hilsenrath further describes transmitting the least cost routing information at a time when the cost of transmitting is cheap. (P. 24, ll. 14-17).

## PRINCIPLES OF LAW

### *1. Scope of claims*

“[T]he words of a claim ‘are generally given their ordinary and customary meaning.’” *Philips v. AWH Corp.*, 415 F.3d 1303, 1312 (Fed. Cir. 2005) (en banc) (quoting *Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576, 1582 (Fed. Cir. 1996)). Furthermore, the specification is the single best guide to the meaning of a claim term. *Phillips v. AWH Corp.*, 415 F.3d at 1315 (Fed. Cir. 2005).

### *2. Obviousness*

To reach a conclusion of obviousness under § 103, the Examiner bears the burden of producing a factual basis supported by a teaching in a prior art reference or shown to be common knowledge of unquestionable demonstration. Our reviewing court requires this evidence in order to establish a prima facie case. *In re Piasecki*, 745 F.2d 1468, 1471-72 (Fed. Cir. 1984).

Furthermore, the test for obviousness is what the combined teachings of the references would have suggested to one of ordinary skill in the art. *See In re Kahn*, 441 F.3d 977, 987-88 (Fed. Cir. 2006), *In re Young*, 927 F.2d 588, 591 (Fed. Cir. 1991) and *In re Keller*, 642 F.2d 413, 425 (CCPA 1981).

“Section 103 forbids issuance of a patent when ‘the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.’”

*KSR Int'l Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 1734 (2007).

## ANALYSIS

### *Rejection of claims over Stinson, Zonoun, and Hilsenrath*

With respect to claims 1 and 22, Appellant disagrees with the Examiner’s findings with respect to the delay criterion being indicative of an “acceptable delay before transfer initiation” (App. Br. 14-16) and argues that the delay discussed in *Stinson* is not a delay before transfer initiation (App. Br. 15). Appellant also contends that *Stinson*’s quality of service indicator as discussed in column 2, lines 67 through column 3, line 6 is “a maximum latency in data already transmitted to and received from the subscriber unit” (*id.*). Appellant further asserts that *Stinson*’s quality of service indicator relates to a maximum latency in data transmitted to and received from the subscriber unit and therefore, implies that the data has already been transferred (*id.*).

The Examiner argues (Ans. 15) that based on the relied on portions of *Stinson*; the quality of service considers maximum latency as well as error

rate, or the transmission bandwidth as factors in selecting an acceptable delay. The Examiner further argues that Stinson calculates the delay for the intended quality of service based on the associated cost, which provides an approximate time delay before commencing communication (*id.*).

Initially, we observe that Appellant has merely identified cost as a primary transfer criterion that is determined by different tariff services at different times (Spec. 6:16-26) wherein the cost criterion as “a function of delay before transfer is started” (Spec. 7:15-27) is used to determine if delayed transmission is acceptable as a solution. Appellant’s argument that Stinson does not disclose any acceptable delay before transfer initiation ignores the fact that Stinson considers acceptable quality related factors for a lower cost transmission (FF 1 and 2). As pointed out by the Examiner (Ans. 15), Stinson also describes cost in terms of service quality related to transmission factors (FF 3) and time of day (FF 4).

As such, Stinson provides cost information to the subscriber in terms of the factors related to the quality of transmission, which further varies for different times. We, therefore, disagree with Appellant that Stinson only considers latency in data already transmitted. As discussed above, the cost information provided by Stinson is based on many factors related to quality of transmission, as well as time of day, which implies a delay before transfer initiation.

We also remain unconvinced by Appellant’s argument (App. Br. 16; Reply Br. 3) that Hilsenrath does not reference future and current tariffs in determining the least cost route. Hilsenrath provides for cost information related to different rates applied to different times of day and different days of week (FF 9). Additionally, Hilsenrath determines the least cost routing



information based on those different rates (FF 10) which determine how data transfer may be affected by comparing the cost at the current time with the cost of transferring at a later time. In that regard, the cost determination based on the acceptable delay if the data is transmitted now versus, for example, at night/weekend for a lower cost, meets the claim limitation of determining “by reference to both current and future data-transfer tariffs.”

Thus, we find that one of ordinary skill in the art would have combined the teachings of Stinson with those of Zonoun and Hilsenrath to benefit from the routing metrics of Zonoun (FF 6-8) and the cost routing information of Hilsenrath. The information related to different factors for lowering the cost of transmission and the factors involved, as disclosed in Stinson and Hilsenrath, provide an acceptable delay in exchange for lower cost to be considered in selecting the transmission route. While the cost information may be available during data transmission, based on our findings above, we agree with the Examiner that such delay is also available for consideration before transfer initiation and applies to both current and future data-transfer costs.

## CONCLUSION

Because Appellant has failed to point to any error in the Examiner’s position and in view of our analysis above, we find that the teachings of Stinson in combination with Zonoun and Hilsenrath, when considered as a whole, support the Examiner’s obviousness rejection of claims 1 and 22. Thus, we sustain the 35 U.S.C. § 103(a) rejection of claims 1, 2, 4, 8, 10, 13-15, 18, 19, and 22 over Stinson, Zonoun, and Hilsenrath.

Regarding the rejection of the remaining claims, Appellant merely present arguments related to the same features discussed above with respect to claims 1 and 22 (App. Br. 17-18), which we found to be unpersuasive. Therefore, for the same reasons discussed above, we remain unpersuaded of any error in the Examiner's obviousness rejection of claims 3, 5-7, 9, 11, 12, 20, 21, 23, and 24 over Stinson, Zonoun, and Hilsenrath, and Shaffer.

**ORDER**

The decision of the Examiner rejecting claims 1-15 and 17-24 is affirmed.

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Application 09/770,074

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. 1.136(a)(1)(iv).

AFFIRMED

ELD

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